Supreme Court of the United States.

No. 145.—October Term, 1903.

The United States, Petitioner, vs. The Northern Pacific Railroad Company and The Northern Pacific Railway Company.	On writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[February 23, 1904.]

This was a suit brought by the United States against the Northern Pacific Railroad Company and the Northern Pacific Railway Company to cancel patents issued in May, 1895, by the United States to the railroad company, to whose rights the railway company had succeeded. The lands are situated in the State of Washington, north of Portland, in the State of Oregon. The case was heard in the Circuit Court on facts stipulated and the bill dismissed, whereupon it was carried to the Circuit Court of Appeals for the Ninth Circuit, and that court certified to this court certain questions on which it desired instructions. The whole record and cause were then required to be sent up for consideration.

Mr. Chief Justice Fuller delivered the opinion of the Court:

By the act of Congress of July 2, 1864, (13 Stat. 365, c. 217,) a grant was made to the Northern Pacific Railroad Company in aid of the construction of a railway from Lake Superior to some point on Puget Sound, with a branch *via* the Columbia River to a point at or near Portland, Oregon, of lands to which "the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims, or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office."

On May 31, 1870, Congress passed a joint resolution making an additional grant to the same company for the location and construction of "its main road to some point on Puget Sound *via* the valley of the Columbia River, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound." 16 Stat. 378.

The line east of Portland provided for in the act of 1864 formed nearly a right angle at Portland with the line from there to Puget Sound pro-

vided for in the joint resolution, and thus the two grants overlapped, and the lands in suit fell within the overlap.

But the line down the Columbia from Wallula to Portland was never built and the grant was forfeited September 29, 1890, (26 Stat. 496, c. 1040,) while the line from Portland to Puget Sound and east across the Cascade Mountains was built and the grants earned.

Holding that the lands in the overlap passed to the company under the resolution of 1870, the Interior Department patented those in question to the railroad company, but afterwards, and on July 18, 1895, it was held that the lands did not pass under that grant, because at its date they were reserved or appropriated under the grant of 1864 to the same company. 21 L. D. 57.

That grant did not in terms reserve the lands, and the question would seem to be whether the line down the Columbia from Wallula to Portland had been definitely located May 31, 1870, since it is settled that the act of 1864 did not take any lands out of the power of disposition of Congress until the line of road was definitely located by maps duly filed as required. *Northern Pacific R. R. Co.* v. *Sanders*, 166 U. S. 620; *United States* v. *Oregon & California R. R. Co.*, 176 U. S. 28. The argument that the topography of the country between Wallula and Portland was such that the lands necessarily fell within the boundaries of that grant is without merit, for it cannot be assumed that Congress intended itself to definitely locate that part of the line in view of the language used and the settled law on the subject.

And it does not appear that any portion of the line from Wallula to Portland was ever definitely located, but it does appear that the line from Portland to Puget Sound was definitely located under the resolution of May 31, 1870, in part September 13, 1873, and the remainder September 22, 1882; that the road was completed as located, and was accepted by the government.

It is true that, March 6, 1865, Josiah Perham, then president of the Northern Pacific Company, transmitted to the Secretary of the Interior a map of the general line of the road, which the Secretary transmitted to the Commissioner of the General Land Office, with the recommendation that the lands along the line indicated be withdrawn. But the Commissioner protested against the acceptance of the map, and his letter to the Secretary, giving his reasons, bears an endorsement in pencil to the effect that the refusal to accept was sustained by the Secretary.

The by-laws of the company showed no authority in its president to locate the line, and its records, up to May 18, 1865, showed no action conferring such authority. No withdrawals were made under the alleged map.

In *United States* v. *Oregon & California R. R. Co.*, *supra*, it was held that if the Perham map were valid as a map of general route, it did

not operate as a reservation, and in *Doherty* v. *Northern Pacific Railway Company*, 177 U. S. 421, it was referred to as if not constituting a location even of the general route. It was not authorized by the company, was not accepted by the Department, and was practically worthless.

It is also true that on July 30, 1870, two maps of general route were transmitted to the Secretary, one of them showing a line extending from the mouth of the Montreal River, Wisconsin, to a point at the mouth of the Walla Walla River in Washington; and the other from the mouth of the Walla Walla, extending down the valley of the Columbia River to a point near Portland, and thence northerly to a point on Puget Sound. Withdrawals along the route so designated were directed, and so far as the line from Portland to Puget Sound was concerned the withdrawals must have been under the resolution. And the lands in suit are opposite to that part of the line.

The Circuit Court of Appeals in its certificate states that it appears to that court "that the case presents issues and facts identical with those which were involved in the case of the *United States* v. *The Oregon & California Railroad Company*, decided by the Supreme Court of the United States and reported in 176 U. S. 28, with this difference, that the defendant, the Northern Pacific Railroad Company, is the grantee of both the grants of land, the overlapping portions of which are the subject of the controversy herein, and that this case is ruled by the decision of the Supreme Court in the case above referred to, unless the fact that the Northern Pacific Railroad Company, by reason of being the grantee of both said land grants, is estopped to question the sufficiency of its own maps to designate the boundaries of its grant by virtue of the act of July 2, 1864."

The contention in the case thus referred to was that the lands there in controversy, which had been patented to the Oregon and California Railroad Company, were reserved and appropriated for the benefit of the Northern Pacific Railroad Company under the act of July 2, 1864, and by reason of the filing of the Perham map. By the act of July 25, 1866, Congress made a grant of lands in aid of the construction of a railroad and telegraph line between Portland, Oregon, and the Central Pacific Railroad in California. That grant was in the usual terms employed in such acts. Subsequently the benefit of the grant as to that part of the road to be constructed in Oregon was conferred upon the Oregon Central Railroad Company. The lands in dispute, whether place or indemnity, were within the limits of the grant of 1866. The entire line of road of the Oregon and California Railroad Company, which was the successor of the Oregon Central Railroad Company, was fully constructed and duly accepted by the president, and at the time the suit was begun was being operated and had been continuously operated by that company. The Oregon company filed its map of definite location in 1870, and it was accepted by the Land

Department. There was no withdrawal of indemnity lands on the proposed line of the Northern Pacific Railroad Company between Wallula and Portland, nor was there any definite location or construction of its road opposite to the lands in suit. The forfeiture act was passed September 29, 1890. It was held that nothing in the act of 1864 stood in the way of Congress subsequently granting to other railroad corporations the privilege of earning any lands that might be embraced within the general route of the Northern Pacific Railroad; and that, as the grant contained in that act did not include any lands that had been reserved or appropriated at the time the line of the Northern Pacific Railroad was definitely fixed, which it had not been at the time the act of July 25, 1866, was passed, or when the line of the Oregon company was definitely located; as the lands in dispute were within the limits of the grant contained in the act of 1866, and the road of the Oregon railroad was definitely fixed at least as early as January 29, 1870, the Northern Pacific Railroad Company having done nothing prior to the latter date, except to file the Perham map of 1865, which map was not one of definite location and was not accepted; and as, prior to the forfeiture act of September 29, 1890, there had not been any definite location of the Northern Pacific Railroad opposite the lands in dispute, there was no escape from the conclusion that the lands were lawfully earned by the Oregon company and were rightfully patented to it.

We do not think the fact that the Northern Pacific Company was the grantee in both grants limits the force of this decision. The resolution of 1870 and the act of July 2, 1864, were *in pari materia*, and no reason is perceived for holding that the act operated to exclude from the subsequent grant by the resolution.

In *Wisconsin Central Railroad Company* v. *Forsythe*, 159 U. S. 46, two grants had been made to the State of Wisconsin, in 1856 and 1864, for the benefit of two railroad companies, and there had been a withdrawal of indemnity lands of the one grant, which conflicted with the subsequent place grant, and we held that as both grants were to the State, although one grant had been conferred on one company, and the other on another, the lands in dispute were not excepted from the later grant; and Mr. Justice Brewer, speaking for the court, said: "For whose benefit was the withdrawal of the lands within the indemnity limits of the Bayfield road made? Obviously, as often declared, for the benefit of the grantee. It is as though the United States had said to the grantee: we do not know whether, along the line of road, when you finally locate it, there will be six alternate sections free from any pre-emption or other claim, and, therefore, so situated that you may take title thereto, and so we will hold from sale or disposal to any one else an additional territory of nine miles on either side that within those nine miles you may select whatever lands

may be necessary to make the full quota of six sections per mile. When Congress, by a subsequent act, makes a new and absolute grant to the same grantee of lands thus held by the Government for the benefit of such grantee, upon what reasoning can it be said that such grant does not operate upon those lands?"

As to the maps of general route of July 30, 1870, they were filed two months after the date of the resolution, were not maps of definite location, and included the line authorized by the resolution. These lands were opposite to part of that line, and all the unappropriated odd sections so situated, within the prescribed limits, were granted.

The decree of the Circuit Court is *Affirmed.*

Mr. Justice McKenna took no part in the decision of this case.

True copy.

Test:

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tral Company, had been made for the benefit of the state, which was the grantee in both acts, that, although the grants had been divided and one conferred upon one company and the other upon another, the land in controversy could not be held to have been excepted from the later grant of 1864. The court said:

> "For whose benefit was the withdrawal of the lands within the indemnity limits of the Bayfield road made? Obviously, as often declared, for the benefit of the grantee. It is as though the United States had said to the grantee: We do not know whether, along the line of road, when you finally locate it, there will be six alternate sections free from any pre-emption or other claim, and, therefore, so situated that you may take title thereto, and so we will hold from sale or disposal to anyone else an additional territory of nine miles on either side that within those nine miles you may select whatever lands may be necessary to make the full quota of six sections per mile. When congress, by a subsequent act, makes a new and absolute grant to the same grantee of lands thus held by the government for the benefit of such grantee, upon what reasoning can it be said that such grant does not operate upon those lands?"

It is manifest that the Joint Resolution of May 31, 1870, conferring the grant of lands for the line of road from Portland to Puget Sound, is amendatory of and *in pari materia* with the Act of July 2, 1864. A withdrawal or appropriation of lands for the benefit of the Northern Pacific Company under the original Act would not defeat the grant as enlarged and extended by the Joint Resolution; because the proposition can not be maintained, that by prior

reservation in favor of a railroad company land is excepted from the operation of a subsequent grant to *the same company*.

It is obvious that the general route map of July 30, 1870, cuts no figure in the case, for two reasons. First, it could not operate as an appropriation existing at the date of the Joint Resolution, for it was filed afterwards. Second, any withdrawal under that map would be a withdrawal as much under the Joint Resolution as under the act of 1864, because the map shows one line continuous from Wallula to a point at or near Portland and thence northwardly to Puget Sound. The line from Portland to Puget Sound, as before stated, was not authorized by, or mentioned in, the act of 1864.

If we are correct up to this point, the case is ended and little need be said of the three questions stated in the certificate of the Circuit Court of Appeals (Transcript, p. 167).

If the Perham map was no map, because unauthorized by the company and because rejected by the Government, it could not estop anybody. The general route map of July 30, 1870, cannot affect the rights of the company in this case by estoppel or otherwise, because, first, it was a map only of *general* route, and the law did not attach the rights of the company to any land or set aside any land for the company until the map of *definite* location was filed. Second, because the general route map was a map of the line authorized by the Joint Resolution (as well as of the line authorized by the act

of 1864) and the lands in suit are opposite that part of the line authorized by the Joint Resolution.

To the third question certified by the court, the case of *Wisconsin Central R. Company v. Forsythe*, *supra*, is a complete answer. The Joint Resolution of 1870 grants not *part* of, but *all* the unappropriated odd sections opposite the line authorized by that resolution and within the prescribed limits. Whatever argument might have been made, that it would not be held the intent of Congress to include within the grant of the Joint Resolution, lands situate like these, if the prior grant had been made to another company, that argument utterly fails when it is considered that the same company was grantee in both acts. As the Court said in the *Forsythe Case*, "upon what reasoning can it be said that such grant does not operate upon those lands"?

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